THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

Writ Petition No.9830 of 2005

08.12.2005

Between

K.Appala Raju Reddy

PETITIONER

AND

The District Collector (Panchayat Wing), Srikakulam District at Srikakulam and others.

RESPONDENTS

THE HON'BLE MR JUSTICE B.SESHASAYANA REDDY

Writ Petition No.9830 of 2005

ORDER:

This writ petition has been filed by K.Appala Raju Reddy with a prayer to issue a writ or direction more particularly one in the nature of writ of Mandamus declaring Proc.No.935/2005.C, dated 19.04.2005, issued by the District Collector (Panchayat Wing), Srikakulam-first respondent under Section 249 (6) of A.P. Panchayat Raj Act, 1994 (for short 'the Act') as illegal, arbitrary and violative of principles of natural justice.

The petitioner is Sarpanch of Kotabommali gram panchayat, Srikakulam District. Certain allegations were levelled against the petitioner and thereupon, a report from the Divisional Panchayat Officer, Tekkali, Srikakulam District has been called for. The Divisional Panchayat Officer conducted an enquiry on 05.02.2005 and submitted his report. Basing on the enquiry report of the Divisional Panchayat Officer, a show cause notice, dated 11.03.2005, was issued to the petitioner under Section 249 (6) of the Act calling upon him to explain as to why action should not be initiated against him for the allegations levelled therein. The petitioner submitted his explanation. Thereafter, the District Collector (Panchayat Wing), Srikakulam called for further report from the District Panchayat Officer, Srikakulam District. The District Panchayat Officer, Srikakulam conducted re-enquiry on 12.04.2005 and submitted his report. Basing on the enquiry report, an order came to be passed keeping the petitioner under suspension for three months vide Proc.No.935/05.C, dated 19.04.2005. These proceedings are questioned in the present writ petition.

Counter affidavit has been filed by the first respondent. It is stated in the counter affidavit that the petitioner was furnished with the enquiry report and thereafter the impugned order came to be passed. I deem

it appropriate to refer to the relevant portion in the counter affidavit and it is thus:-

> "The first respondent has directed the District Panchayat Officer, Srikakulam to conduct re-enquiry. The District Panchayat Officer, Srikakulam conducted enquiry on 12.04.2005 and submitted his enquiry report with statements recorded at the time of enquiry. Basing on the enquiry report of the District Panchayat Officer, Srikakulam, the petitioner was kept under suspension for three months vide Progs.Rc.No.935/05 C Dt.19.04.2005 of the Collector (Pt. Wing), Srikakulam. It is submitted further that enquiry was conducted by the Divisional Panchayat Officer, Tekkali in the month of Feb.2005 and therefore, the contention of the petitioner that no enquiry was conducted by Divisional Panchayat Officer, Tekkali is not true, since in his explanation dated 30.03.2005, the petitioner submitted that the Divisional Panchayat Officer, Tekkali conducted enquiry. The petitioner's contention that he was not supplied with the copy of the enquiry report despite his request is not true. In fact, he never requested for a copy of the enquiry report. It is submitted that the show cause notice issued to the petitioner contains all information of the report submitted by the enquiry Officer. So there is no need to furnish enquiry report to the petitioner.
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> In reply to paras 5 and 6 of the affidavit, it is submitted that the petitioner's contention that the first respondent's orders are highly illegal is not true since the orders were issued after thorough examination of the issue. Admittedly against the order of suspension under Section 264 of A.P. Panchayat Raj Act, 1994 revision lies to the Government, which he did not choose. The contention of the petitioner that he was not given an opportunity before issuing orders of his suspension is not correct since a show cause notice was issued to the petitioner indicating the proposed action under Section 249(6) of the A.P. Panchayat Raj Act, 1994 for which the petitioner submitted his explanation also dated 30.03.2005. As stated in para 4 it is submitted that there is no need to furnish enquiry report to the petitioner as the show cause notice contains the contents of enquiry report and so the contention that he should be supplied with a copy of the enquiry report before taking action against him is not correct."

Heard the leaned counsel for the petitioner and the learned Government Pleader for Panchayat Raj appearing for the respondents.

The learned counsel for the petitioner submits that the petitioner submitted his explanation to the show cause notice and thereafter, the District Collector (Panchayat Wing), Srikakulam directed the District Panchayat Officer to conduct further enquiry. He further submitted that the District Collector without furnishing the enquiry report of the District Panchayat Officer, Srikakulam passed orders placing the petitioner under suspension.

It is fairly conceded by the learned Government Pleader for Panchayat Raj appearing for the respondents that the enquiry report submitted by the District Panchayat Officer on 12.04.2005 has not been furnished to the petitioner.

In that view of the matter, it can be said that no opportunity was given to the petitioner to submit his explanation with regard to the allegations levelled against him in the re-enquiry conducted by the District Panchayat Officer, Srikakulam. Therefore, I find that the order impugned in the writ petition is in violation of principles of natural justice and on this ground alone, the order impugned in the writ petition is liable to be set aside.

In the result, the writ petition is allowed setting aside the impugned Proc.No.935/2005.C, dated 19.04.2005, passed by the first respondent under Section 249 (6) of the Act. The first respondent is at liberty to proceed further after furnishing a copy of the re-enquiry report submitted by the District Panchayat Officer, Srikakulam. No costs.

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08.12.2005

VGB